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OFFICE OF PETITIONS

In re Application of :
Roger A. Dulin et al :
Application No. 10/706,343 : DECISION ON PETITION
Filed: November 12, 2003 :
Attorney Docket No. 23638-040 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 6, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application has been abandoned for an extended period of time. The U.S. Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." *See Changes to Patent Practice and Procedure*, 62 *Fed. Reg.*, at 53160 and 53178; 1203 *Off. Gaz. Pat. Office*, at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the U.S. Patent and Trademark Office).


The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final rejection mailed July 10, 2006, is accepted as having been unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$2,350 extension of time fee submitted with the petition on November 6, 2008 was subsequent to the maximum extendable period for reply, this fee is unnecessary. Petitioner

may request a refund of the extension fee by writing to the Office of Finance Refund Section. A copy of this decision should accompany the request.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 1794 for appropriate action by the Examiner in the normal course of business on the reply received November 6, 2008.


Karen Creasy
Petitions Examiner
Office of Petitions